IN THE HIGH COURT OF JUDICATURE AT PATNA
CWJC No.16677 of 2004
SRI BHAGWAN TIWARI
Versus
THE STATE OF BIHAR & ORS

CWJC No.4346 of 2008
NANDJI BHAGAT
Versus
THE STATE OF BIHAR & ORS

CWJC No.8642 of 2007
MR.ASHOKA KUMAR THAKUR
Versus
THE UNION OF INDIA & ORS

CWJC No.10001 of 2008
MRITUNJAY KUMAR PRASAD
Versus
THE STATE OF BIHAR & ORS

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CWJC No.10018 of 2008
SUNAINA DEVI
Versus
THE STATE OF BIHAR & ORS

CWJC No.10655 of 2007
ASHOK KUMAR DWIVEDI
Versus
THE STATE OF BIHAR & ORS

CWJC No.12945 of 2007
PARAS NATH SINGH
Versus
THE STATE OF BIHAR & ORS

CWJC No.13028 of 2007
BIRENDRA PRASAD
Versus
THE STATE OF BIHAR & ORS

CWJC No.13030 of 2007
MANAN TIWARI
Versus
THE STATE OF BIHAR & ORS

CWJC No.13518 of 2007
RAJENDRA YADAV
Versus
THE STATE OF BIHAR & ORS

CWJC No.13578 of 2007
BRIJ NATH YADAV
Versus
THE STATE OF BIHAR & ORS

CWJC No.13586 of 2007
SUGRIVA BAITHA
Versus
THE STATE OF BIHAR & ORS

CWJC No.13587 of 2007
MINA KUMARI
Versus
THE STATE OF BIHAR & ORS

CWJC No.13869 of 2007
SMT.MUNNI KUMARI
Versus
THE STATE OF BIHAR & ORS

CWJC No.5762 of 2008
RABINDRA SAH
Versus
THE STATE OF BIHAR & ORS

CWJC No.8609 of 2008
CHANDRA GHOSH PRASAD
Versus
THE STATE OF BIHAR & ORS

CWJC No.8615 of 2008
RAM NARESH CHOUDHARY
Versus
THE STATE OF BIHAR & ORS

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CWJC No.8561 of 2008
HARI SHANKER YADAV
Versus
THE STATE OF BIHAR & ORS

CWJC No.8597 of 2008
SHIVDENEE PRASAD YADAV
Versus
THE STATE OF BIHAR & ORS

CWJC No.8607 of 2008
VAYAS PATHAK
Versus
THE STATE OF BIHAR & ORS

CWJC No.8822 of 2008
RAMENDRA TIWARY
Versus
THE STATE OF BIHAR & ORS

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CWJC No.9054 of 2008
MUKTI NATH CHAUDHARY
Versus
THE STATE OF BIHAR & ORS

CWJC No.9204 of 2008
BACHCHA LAL SINGH
Versus
THE STATE OF BIHAR & ORS

CWJC No.9387 of 2008
RABINDRA CHOUBEY
Versus
THE STATE OF BIHAR & ORS

CWJC No.9488 of 2008
DEEP NARAIN PATHAK
Versus
THE STATE OF BIHAR & ORS

CWJC No.9658 of 2008
SURENDRA SHARMA
Versus
THE STATE OF BIHAR & ORS

CWJC No.9710 of 2008
CHUNNILAL PRASAD
Versus
THE STATE OF BIHAR & ORS

CWJC No.9731 of 2008
SURESH CHANDRA PRASAD
Versus
THE STATE OF BIHAR & ORS

CWJC No.9795 of 2008
VISHWAMBHAR SHARMA
Versus
THE STATE OF BIHAR & ORS

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CWJC No.8256 of 2008
GAYA SINGH
Versus
THE STATE OF BIHAR & ORS

CWJC No.9049 of 2008
HARE RAM YADAV
Versus
THE STATE OF BIHAR & ORS

CWJC No.14371 of 2005
RADHA KRISHNA ROY
Versus
THE STATE OF BIHAR & ORS

CWJC No.10312 of 2007
PRABHU NATH RAI
Versus
THE STATE OF BIHAR & ORS

CWJC No.10048 of 2008
BABU RAM YADAV
Versus
THE STATE OF BIHAR & ORS

CWJC No.10767 of 2004
ASHOK KUMAR CHATURVEDI @CHOUBE
Versus
THE STATE OF BIHAR & ORS

CWJC No.8270 of 2004
GOPAL THAKUR
Versus
THE STATE OF BIHAR & ORS

CWJC No.17048 of 2007
RAM PRAVESH
Versus
THE STATE OF BIHAR & ORS

CWJC No.10208 of 2008
GORAKH PRASAD
Versus
THE STATE OF BIHAR & ORS

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For the Petitioners : M/S Tej Bahadur Singh,
Rajendra Narayan,
M.N. Parbat, Umesh Kumar Mishra,
Dr. Gyan Prakash, Bamdeo Pandey,
Prabhakar Singh, Arvind Kr. Tiwary,
Subhash Kr., S.K. Bharti,
Suresh Pd. Singh No. 1, Vitesh Kr. Singh.

For the State : M/S Gyan Prakash Ojha,J.C. to G.A. 7,
Alok Kumar, J.C. to G.A. 1,
Rajesh Kr. Verma, J.C. to SC 11
Ajit Kumar, J.C. to G.P. 20,
Lalan Kumar, J.C. to G.P. 22,
Dhirendra Kumar"Munna", J.C. to SC8
Sunil Kr. Mandal, S.C. 15.

4. 16.07.2008 In this batch of writ applications, common issues are involved and, therefore, they have been heard together and are being disposed off by this common order except to the extent that any distinction has been made hereinafter.

A counter affidavit has been filed in CWJC No. 16677 of

2004 on behalf of the State. It has already been noticed above that the issues are common in all the writ applications. The issues arising herein have already been considered by a Bench of this Court in CWJC No. 10568 of 2007 and analogous cases disposed on 20.5.2008. Though learned counsel for the State in some of the cases has made a prayer for adjournment to file what is euphemistically termed as "composite" counter affidavit, this Court is not persuaded to adjourn the matter for the purpose. As noticed above, a counter affidavit has already been filed in CWJC No. 16677 of 2004. Additionally in CWJC No. 10568 of 2007 and analogous cases the contention of the State have been heard and considered at length. Quite obviously the State has had adequate opportunity to defend itself and surely the State cannot take different stand in different writ petitions arising out of common issues. The Court, therefore, declined the prayer for adjournment.

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The facts of the case, have been noted in detail in the order dated 20.5.2008 in CWJC No. 10568 of 2007 and, therefore, the Court does not consider it necessary to reproduce the same all over again. To buttress the reasoning taken by the Bench in CWJC No. 10568 of 2007, this Court only adds that the order of the Supreme Court did not interfere with the termination orders of the petitioners upheld by the Division Bench. Even while declining interference the Supreme Court ordered that the petitioners be put back in service obviously as a temporary measure, till such time that fresh selections were not made. That the petitioners could also apply in response to any fresh

procedure of selection, when obviously there eligibility would be appropriately considered. The only benefit given to them was an observation for taking into account the past experience and relaxation of age. This order was passed on 30.9.1986. This order of the Supreme Court came to be clarified on 9.1.1989 in C.M.P. No. 91 of 1989 when it was emphasized that persons concerned would be put back with effect from 30.9.1986, shall have the benefit of continuity of employment with consequential benefits when it was again reiterated that all these were subject to the fresh process of selection.

From the order in CWJC No. 10568 of 2007 and the counter affidavit filed presently in CWJC No. 16677 of 2004 it is apparent that the State has taken no steps since 30.9.1986 to commence the process of selection afresh. In fact, the State can clearly be said to have abetted the continuance of the petitioners by not complying the order of the Supreme Court for fresh selection. Needless to add that when such process of fresh selection would have been initiated by the State all issues of eligibility of the petitioners including the genuineness of their certificates, qualification of training etc. would have been appropriately considered to decide whether to select them or not.

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The counter affidavit in CWJC No. 16677 of 2004 states that the issue before the Supreme Court was different and the issue for termination presently was different and, therefore, the petitioners were trying to mislead and confuse the issue by referring to the Supreme Court orders.

This Court in the facts and circumstances of the case is

satisfied that it is the Respondents who are trying to circumvent the order of the Supreme Court by attempting to create a cloud of confusion. The Supreme Court has clearly directed their continuance till fresh selections are made. The Respondents cannot be permitted to ignore the former part of the Supreme Court order directing them to initiate the process of selection afresh even while permitting them to examine the eligibility of the petitioners on any ground which should have appropriately been the subject matter of consideration at the time of such fresh selection.

This Court, therefore, finds no reason to arrive at a conclusion different from that in CWJC No. 10568 of 2007, for the additional reasons recorded presently.

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The impugned orders of termination are, therefore, quashed. The petitioners shall be deemed to continue in service in terms of the order of the Supreme Court dated 30.9.1986 and 9.1.1989 till such time that the Respondent-State completes the process of selection afresh.

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Before parting with these cases, this Court considers it proper to make a clarification in the order. There may be persons, who approached the High Court against their initial termination in 1985 and pursued the matter before the Apex Court. There shall be no difficulty with regard to the benefit of the present order to them. There may be others, who assailed their order of termination before this Court but did not to the Supreme Court. Others on their writ petitions may have been granted relief in terms of the order of the Supreme

Court. Such persons shall also be entitled to the benefit of the present order. Yet there may be cases where persons may have not assailed their termination order before this Court much less before the Supreme Court but the State itself may have decided that their cases were similarly covered and extended the same benefit to them. They shall also be covered by the present order. Lastly there may be cases where persons may not have assailed their order of termination in 1985 either before this Court or before the Apex Court and who may not have been reinstated by the State. They shall not be entitled to the benefit of the present order. Liberty is given to the State to examine the cases of the persons in the last category.

The writ applications stand allowed to the extent indicated but with clarifications in regard to those qualified hereinabove.

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AKS/ **(Navin Sinha, J.)**

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